

**Before The  
Postal Regulatory Commission  
Washington, DC 20268**

**Postal Regulatory Commission  
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**In the Matter of: Fernandina Beach Downtown Post Office, FL 32035**

**Postal Regulatory Commission Docket No. A2013-7**

**Postal Service Docket No. 1363326 - 32034**

**Petitioner's Opposition to Postal Service's Motion to Dismiss (August 1, 2013)**

Petitioner:

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**Petitioner's Opposition to Postal Service's Motion to Dismiss:**

The Petitioner respectfully requests that the Postal Regulatory Commission deny the Postal Service's Motion to Dismiss.

The Postal Service's Motion to Dismiss stated two grounds for dismissal, both based on the Postal Service's opinion that the Postal Regulatory Commission "lacks subject matter jurisdiction". The Petitioner does not agree with this assertion by the Postal Service, and believes that the Commission does have jurisdiction over this Post Office closing based on the following grounds:

1. The Postal Service states its first ground for dismissal as "the Petitioner's appeal concerns the rearrangement of retail facilities within the Fernandina Beach community, an event that falls outside the scope of section 404(d)(5) ...". In its dismissal Argument, the Postal Service further states that "Specifically, the procedural requirements of 39 U.S.C. § 404(d) do not apply because the closing of Fernandina Beach Downtown Station does not qualify as a discontinuance action envisioned by 39 U.S.C. § 404(d). When determining whether it has jurisdiction to hear an appeal, the Commission must consider the context of the Postal Service's actions in the affected community. Typically, a change to the Postal Service retail network in a community constitutes a "rearrangement" if the move or elimination of a Postal Service retail facility in that community is performed as part of an overall realignment of the network of access points in that community. As a result of the change, the postal services available to the community must continue to meet the community's postal needs as measured by customer use of postal services in that Community.". Petitioner disagrees with two points in this argument:
  - a) First, this is first time the Postal Service has used the term "rearrangement". This term doesn't appear in any official way in the Administrative Record filed by the Postal Service on August 1, 2013 and supplemented in a second filing on August 9, 2013. In fact, the Administrative record is full of references to "close" or "closing", and "discontinuance". Contrary to the Postal Service's argument that "the closing of Fernandina Beach Downtown Station does not qualify as a discontinuance action", the following documents in the Administrative Record either have discontinuance in the document title or body – Item Nbr: 5; Item Nbr: 6; Item Nbr: 8; Item Nbr: 10; Item Nbr: 13; Item Nbr: 18; Item Nbr: 28; Item Nbr: 29; Item Nbr: 31; Item Nbr: 32 ("consolidate" is used); and Item Nbr: 33. Also, please note that the official "Final Determination to Close" notice only uses the term Close, and never mentions a rearrangement of services.

- b) Second, the Postal Service cannot classify the Fernandina Beach Downtown Post Office as a simple “retail facility” because it offers Post Office Boxes for rent. Post Office Boxes are not offered at Books Plus or any other “retail facility” listed as an alternative source of postal services mentioned in the Postal Services Motion to Dismiss. PO Boxes are offered at the Sadler Road Post Office. So, the Downtown Post Office is more aligned with the services of Sadler Road Post Office than it is any of the “retail facilities”. Also, see further argument on this point in #2 below.
2. The Postal Service states its second ground for dismissal as “the scope of section 404(d) is limited to Post Offices and its requirements do not extend to the closing of a station or branch ...”. In its dismissal Argument, the Postal Service further states that “In the Postal Service’s view, section 404(d) does not apply to Fernandina Beach Downtown Station because Fernandina Beach Downtown Station is not an independent Post Office.”. This argument is directly contradicted by:
- a) Several documents entered into the Administrative Record by the Postal Service which specifically refer to the Fernandina Beach Downtown Post Office as a “Post Office”. These documents include - Item Nbr: 5; Item Nbr: 10; Item Nbr: 14; Item Nbr: 15; Item Nbr: 18; and Item Nbr: 31.
  - b) Also relevant in determining the Postal Service’s own classification of this location as a “Post Office” is the signage presented to the community and the customers of the Post Office on the exterior of the building. There are 3 signs, that are approximately 3 feet square in size, that proudly proclaim “United States Post Office”. Two pictures have been included as Exhibits A and B to this Opposition. The 3 signs are position on the Southeast corner facing Centre Street, the Southwest corner facing Centre Street, and the Southwest corner facing 4<sup>th</sup> Street.
3. The Postal Service notified the Customers of the Downtown Post Office that they would have the right to appeal the final decision to the Postal Regulatory Commission. In the Administrative Record, Item Nbr: 24, “Notice of Taking Proposal and Comments Under Internal Consideration”, which was posted in the Downtown Post Office on January 20, 2012, the Postal Service stated that “If the decision is to approve the proposal, any customer of the Fernandina beach downtown Station who disagrees will have the right to appeal that decision to the Postal Regulatory Commission in Washington, DC.”.
4. Petitioner offers one last argument supporting this request to deny the Postal Service’s Motion to Dismiss, which addresses both grounds for dismissal argued by the Postal Service. In the Administrative Record submitted by the Postal Service there is a letter noted as Item Nbr: 28. The letter is dated December 22, 2011, and was written by Eric D. Chavez, District Manager, North Florida District, U.S. Postal Service, to United States Senator Bill Nelson, Orlando, Florida. In this letter it is clear that Mr. Chavez not only believes that this matter involves a “Post Office”, but he also believes that the Commission has jurisdiction over this matter under Title 39. In the letter Mr. Chavez states to Senator Nelson “As information, before the Postal Service makes a decision to close or consolidate an independent Post Office, we comply with all the stipulations mandated by Federal law. All final decisions are subject to review by the independent Postal Regulatory Commission, and the discontinuance procedures contained in Title 39, United States Code, are exercised before an independent Post Office can be permanently closed.”. The only alternative interpretation to Mr. Chavez’s full belief that the Commission has full jurisdiction in this matter would be that Mr. Chavez mislead a United States Senator in his letter concerning this matter.

Petitioner respectfully requests that the Postal Regulatory Commission deny the Postal Service’s Motion to Dismiss, and allow the Appeal proceedings to continue.

Thank you for considering this request.

Respectfully,

David A. Granger

Patron of Fernandina Beach Downtown Post Office

Exhibit A:





Exhibit B:

